Kesatuan Pekerja-Pekerja Perusahaan Dunlop Malaysia v DMIB Bhd

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R1-25-30 OF 1996
NIK HASHIM JC
3 SEPTEMBER 1997

Labour Law *— Industrial Court — Award — Jurisdiction — Whether Industrial Court had acted in excess of and without jurisdiction by allowing company to implement the Rota Work System — Whether award was based on all given evidence — Whether chairman admitted documents relating to negotiation, conciliation and offer which are forbidden by s 54(1) and (3) of the Industrial Relations Act 1967 — Whether chairman based his award on all the evidence before him — Whether Industrial Court had encroached into the existing collective agreement — Whether Industrial Court answered the question remitted to it — Whether Industrial Court took the policy and purpose of the Act into account — Industrial Relations Act 1967 ss 30(4), (5), (5A), (6) & 32*

A trade dispute between Kesatuan Pekerja-Pekerja Perusahaan Dunlop Malaysia ('the union') and DMIB Bhd ('the company') was referred to the Industrial Court for an award by the Minister of Human Resources under s 26(1) of the Industrial Relations Act 1967 ('the Act') upon a joint request made by the parties. The reference was over the Rota Work System which the company proposed to implement in its factory in Petaling Jaya wherein the employees' weekly rest day shall be in accordance with the company's roster normally set out before commencement of each month. The Industrial Court awarded that the company be allowed to implement the Rota Work System. The union applied under O 53 of the Rules of the High Court 1980 for certiorari to quash the award on the allegation that the Industrial Court acted in excess of its jurisdiction or without jurisdiction. The allegation was based on various grounds, inter alia, that: (i) the learned chairman of the Industrial Court ('the learned chairman') admitted documents ('the letters') relating to negotiation, conciliation and offer which are forbidden by s 54(1) and (3) of the Act; (ii) the learned chairman did not base his award on all the evidence before him; (iii) the Industrial Court acted beyond the scope of the statutory reference in that by allowing the Rota Work System, the Industrial Court had encroached into the existing collective agreement ('the CA'); (iv) the Industrial Court did not answer the question remitted to it but instead answered some other question not remitted; and (v) the Industrial Court did not take the policy and purpose of the Act into account and its provisions under s 30(4), (5) and (6) when making the award.

Held, dismissing the application with costs:

(1) The learned chairman was correct when he ruled that the letters were not written during the negotiation to which this trade dispute related. The trade dispute which was jointly referred had not arisen at the time when the letters were written. There was no evidence of negotiations, conciliations or offers in the letters.

These letters were in fact actual written agreements between the parties and thus, they were not excluded by s 54(1) and (3) of the Act, which merely excludes evidence of any negotiations, conciliations or offers made without the other party's agreement (see p 285E–F). A

(2) There was no merit in the union's claim that the learned chairman did not base his award on all the evidence before him. Based on the evidence before him, the learned chairman could not have come to any other conclusion as he did. Had the Industrial Court come to an opposite finding, its decisions would have been against the weight of the evidence and therefore, it would have been unreasonable (see p 285H–I). B C

(3) A mere offer of witnesses for cross-examination without the witnesses giving evidence in court is worthless. In that respect, it was the company which gave evidence through its witness to justify the company's need to implement the Rota Work System. However, the union chose not to call any witnesses to rebut the company witness's testimony and that testimony consequently remained unchallenged. Failure to rebut the company's evidence was therefore fatal to the union's case. Therefore, the Industrial Court was justified in coming to its conclusion based on the facts and it was for the Industrial Court and not the High Court to determine the Rota Work System if it was based on evidence that was not rebutted or controverted. Furthermore, it was not a case where the Industrial Court had acted on no evidence or had come to a conclusion which on the evidence it could not reasonably reach (see p 286A–C); *Ashbridge Investments Ltd v Minister of Housing and Local Government* [1965] 3 All ER 371 followed. D E F

(4) The Industrial Court was fully entitled to allow the Rota Work System to be implemented by the company as the implementation of the Rota Work System was not contrary to the CA and it fell squarely within art 5(a) of the CA. Therefore, it was the prerogative of the company to operate and manage its business in the manner it thought benefited it and there was nothing new about the Rota Work System (see p 286E–G); *Nestle Food (M) Sdn Bhd (formerly known as Food Specialities (M) Sdn Bhd) v Kesatuan Pekerja-Pekerja Perkilangan Perusahaan Makanan* [1995] 1 ILR 249 and *Fujisash (M) Sdn Bhd Prai v Kesatuan Pekerja-Pekerja Perusahaan Logam* [1993] 2 ILR 270 followed. G H

Further, since art 33 of the CA was silent on Sunday being the permanent rest day and it was not expressly provided in the CA that Sunday is the permanent rest day nor was there any evidence adduced that Sunday rest day was an existing benefit, art 5(2) of the CA clearly authorized the implementation of the Rota Work System. Moreover, s 59(1) of the Act confers the right on the employer to determine the rest day in a week (see p 286H–I). I

Also, the Industrial Court is given wide powers under s 30(4), (5), (5A) and (6) of the Act in settling trade disputes. The Industrial Court can also create new terms or impose new obligations. Section 32(3) of the Act recognizes the power of the Industrial Court to create any new rights or terms and conditions of employment. Therefore, by these provisions, the Industrial Court's award would supersede any existing right or obligation (see pp 286I and 287A–C); *Viking Askim Sdn Bhd v National Union of Employees in Companies Manufacturing Rubber Products & Anor* [1991] 2 MLJ 115 and *Sabah Banking Employees' Union v Sabah Commercial Banks' Association* [1989] 2 MLJ 284 followed.

(5) The sole question addressed to the Industrial Court for its decision was whether the company should be allowed to implement the Rota Work System and this question was answered in precise terms and in the affirmative by the learned chairman. Therefore, the Industrial Court did not fail to answer the question posed to it (see p 287E–G).

(6) The Industrial Court did in fact take the policy and purpose of the Act into account and its provisions under s 30(4), (5) and (6) when making the award. This contention was utterly frivolous and unfounded (see pp 287 and 288C).

[Bahasa Malaysia summary

Pertikaian sekerja di antara Kesatuan Pekerja-Pekerja Perusahaan Dunlop Malaysia ('kesatuan tersebut') dan DMIB Bhd ('syarikat tersebut') telah dirujuk kepada Mahkamah Perusahaan untuk suatu award oleh Menteri Sumber Manusia di bawah s 26(1) Akta Perhubungan Perindustrian 1967 ('Akta tersebut') atas permintaan bersama yang dibuat oleh pihak-pihak. Rujukan adalah mengenai Sistem Kerja Jadual yang dicadangkan dilaksanakan oleh syarikat tersebut di kilangnya di Petaling Jaya di mana hari cuti mingguan pekerja-pekerja haruslah menurut jadual syarikat tersebut yang biasanya ditetapkan sebelum permulaan setiap bulan. Mahkamah Perusahaan mengawardkan bahawa syarikat tersebut dibenarkan melaksanakan Sistem Kerja Jadual. Kesatuan tersebut memohon di bawah A 53 Kaedah-Kaedah Mahkamah Tinggi 1980 untuk certiorari bagi membatalkan award atas pengataan bahawa Mahkamah Perusahaan telah bertindak melampaui bidang kuasanya atau tanpa bidang kuasa. Pengataan adalah berdasarkan pelbagai alasan, antara lain, bahawa: (i) pengerusi Mahkamah Perusahaan yang bijaksana ('pengerusi yang bijaksana') menerima dokumen-dokumen ('surat-surat tersebut') yang berkaitan dengan perundingan, pendamaian dan tawaran yang dilarang oleh s 54(1) dan (3) Akta tersebut; (ii) pengerusi yang bijaksana tidak mendasarkan award beliau atas semua keterangan di hadapannya; (iii) Mahkamah Perusahaan telah bertindak melampaui skop rujukan statutori dalam ertikata dengan membenarkan Sistem Kerja Jadual, Mahkamah Perusahaan telah melanggar perjanjian kolektif yang wujud ('PK'); (iv) Mahkamah

Perusahaan tidak menjawab soalan yang diremit kepadanya tetapi sebaliknya menjawab soalan lain yang tidak diremitkan; dan (v) Mahkamah Perusahaan tidak mengambil kira polisi dan tujuan Akta tersebut dan peruntukannya di bawah s 30(4), (5) dan (6) sewaktu membuat award.

Diputuskan, menolak permohonan dengan kos:

(1) Pengerusi yang bijaksana adalah betul apabila beliau memutuskan bahawa surat-surat tersebut tidak ditulis semasa perundingan dengan mana pertikaian sekerja ini berkaitan. Pertikaian yang dirujuk bersama tidak berbangkit semasa surat-surat tersebut ditulis. Tiada keterangan tentang perundingan, pendamaian atau tawaran dalam surat-surat tersebut. Surat-surat ini pada hakikatnya adalah perjanjian bertulis sebenar di antara pihak-pihak dan justeru itu, mereka tidak dikecualikan oleh s 54(1) dan (3) Akta tersebut, yang cuma mengecualikan keterangan atas mana-mana perundingan, pendamaian atau tawaran yang dibuat tanpa persetujuan daripada pihak yang satu lagi (lihat ms 285E–F).

(2) Tiada sebarang merit dalam tuntutan kesatuan tersebut bahawa pengerusi yang bijaksana tidak mendasarkan award beliau atas semua keterangan di hadapannya. Berdasarkan keterangan di hadapannya, pengerusi yang bijaksana tidak mungkin mencapai apa-apa kesimpulan lain sebagaimana yang dibuatnya. Andainya Mahkamah Perusahaan mencapai pendapat yang bertentangan, keputusannya tentu akan berlawanan dengan kekukuhan keterangan dan dengan itu, ia akan menjadi tidak munasabah (lihat ms 285H–I).

(3) Sekadar menawarkan saksi-saksi untuk pemeriksaan balas tanpa saksi memberi keterangan di mahkamah adalah tidak bernilai. Berkenaan ini, syarikat tersebut merupakan pihak yang memberi keterangan menerusi saksi bagi menjustifikasikan keperluan syarikat tersebut untuk melaksanakan Sistem Kerja Jadual. Namun demikian, kesatuan tersebut memilih untuk tidak memanggil mana-mana saksi bagi mematahkan keterangan saksi syarikat tersebut dan keterangan itu kemudiannya dibiarkan tidak dicabar. Dengan itu, kegagalan untuk mematahkan keterangan syarikat tersebut adalah padah kepada kes kesatuan tersebut. Maka, Mahkamah Perusahaan berjustifikasi dalam mencapai kesimpulannya berdasarkan fakta-fakta dan ia adalah terpulang kepada Mahkamah Perusahaan dan bukan Mahkamah Tinggi untuk menentukan Sistem Kerja Jadual sekiranya ia berdasarkan keterangan yang tidak dipatahkan atau disangkal. Tambahan pula, ia bukanlah kes di mana Mahkamah Perusahaan telah bertindak atas keterangan yang tidak didapati atau telah mencapai kesimpulan yang mana atas keterangan ia tidak mungkin mencapai secara munasabah (lihat ms 286A–C); *Ashbridge Investments Ltd v Minister of Housing and Local Government* [1965] 3 All ER 371 diikut.

(4) Mahkamah Perusahaan berhak sepenuhnya untuk membenarkan Sistem Kerja Jadual dilaksanakan oleh syarikat tersebut kerana pelaksanaan Sistem Kerja Jadual tidak bertentangan dengan PK

dan ia diliputi oleh perkara 5(a) PK. Maka, ia adalah prerogatif syarikat tersebut untuk mengendali dan menjalankan urusannya dalam cara yang ia fikir memanfaatkan dan tiada apa-apa yang baru tentang Sistem Kerja Jadual (lihat ms 286E–G); *Nestle Food (M) Sdn Bhd (formerly known as Food Specialities (M) Sdn Bhd) v Kesatuan Pekerja-Pekerja Perkilangan Perusahaan Makanan* [1995] 1 ILR 249 dan *Fujisash (M) Sdn Bhd Prai v Kesatuan Pekerja-Pekerja Perusahaan Logam* [1993] 2 ILR 270 diikut.

Seterusnya, oleh kerana perkara 33 PK tidak menyebut tentang hari Ahad sebagai hari cuti tetap dan ia tidak diperuntukkan secara nyata dalam PK bahawa Ahad adalah hari cuti tetap dan tidak juga sebarang keterangan bahawa hari cuti Ahad adalah faedah yang wujud, perkara 5(2) PK dengan jelas membenarkan pelaksanaan Sistem Kerja Jadual. Tambahan pula, s 59(1) Akta tersebut mengurniakan hak kepada majikan untuk menentukan hari cuti mingguan (lihat ms 286H–I).

Juga, Mahkamah Perusahaan diberikan kuasa yang luas di bawah s 30(4), (5), (5A) dan (6) Akta tersebut dalam menyelesaikan pertikaian sekerja. Mahkamah Perusahaan juga boleh mewujudkan hak baru atau mengenakan obligasi baru. Seksyen 32(3) Akta tersebut mengiktiraf kuasa Mahkamah Perusahaan untuk mewujudkan sebarang hak atau terma dan syarat penggajian yang baru. Oleh itu, menerusi peruntukan-peruntukan ini, award Mahkamah Perusahaan akan mengganti apa-apa hak atau obligasi yang wujud (lihat ms 286I dan 287A–C); *Viking Askim Sdn Bhd v National Union of Employees in Companies Manufacturing Rubber Products & Anor* [1991] 2 MLJ 115 dan *Sabah Banking Employees' Union v Sabah Commercial Banks' Association* [1989] 2 MLJ 284 diikut.

(5) Persoalan tunggal yang dikemukakan kepada Mahkamah Perusahaan untuk keputusannya adalah sama ada syarikat tersebut harus dibenarkan melaksanakan Sistem Kerja Jadual dan persoalan ini telah dijawab dalam terma yang tepat dan secara positif oleh pengerusi yang bijaksana. Dengan itu, Mahkamah Perusahaan tidak gagal menjawab persoalan yang dikemukakan kepadanya (lihat ms 287E–G).

(6) Mahkamah Perusahaan pada hakikatnya telah mengambil kira polisi dan tujuan Akta tersebut dan peruntukannya di bawah s 30(4), (5) dan (6) ketika membuat award. Hujah ini adalah remeh dan tidak berasas (lihat ms 287H–I dan 288C).]

Notes

For cases on Industrial Court, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 919–993.

Cases referred to

Ang Beng Teik v Pan Global Textile Bhd, Penang [1996] 3 MLJ 137 (refd)
Ashbridge Investments Ltd v Minister of Housing and Local Government [1965] 3 All ER 371 (folld)

Fujisash (M) Sdn Bhd Prai v Kesatuan Pekerja-Pekerja Perusahaan Logam [1993] 2 ILR 270 (folld)
Harpers Trading (M) Sdn Bhd v National Union of Commercial Workers [1991] 1 MLJ 417 (refd)
Nestle Food (M) Sdn Bhd (formerly known as Food Specialities (M) Sdn Bhd) v Kesatuan Pekerja-Pekerja Perkilangan Perusahaan Makanan [1995] 1 ILR 249 (folld)
Sabah Banking Employees' Union v Sabah Commercial Banks' Association [1989] 2 MLJ 284 (folld)
Viking Askim Sdn Bhd v National Union of Employees in Companies Manufacturing Rubber Products & Anor [1991] 2 MLJ 115 (folld)

Legislation referred to

Employment Act 1955 s 59(1)
Industrial Relations Act 1967 ss 26(1), 29, 30(4), (5), (5A), (6), 32(2), 33, 54, 54(1), (3), 56
Rules of the High Court 1980 O 53

B Lobo (*Lobo & Associates*) for the applicant/union.
N Sivabalah (*Shearn Delamore & Co*) for the respondent/company.

Cur Adv Vult

Nik Hashim JC: This trade dispute between the Kesatuan Pekerja-Pekerja Perusahaan Dunlop Malaysia ('the union') and DMIB Bhd ('the company') was referred to the Industrial Court for an award by the Minister of Human Resources under s 26(1) of the Industrial Relations Act 1967 ('the Act') upon a joint request made by the parties. The reference was over the Rota Work System which the company proposed to implement in its factory in Petaling Jaya. The Rota Work System is a system wherein the employees' weekly rest day shall be in accordance with the company's roster normally set out before the commencement of each month.

Before the Industrial Court, the managing director of the company gave evidence in support of the proposal whereas the union did not call any evidence at all. The Industrial Court subsequently handed down its decision and awarded that the company be allowed to implement the Rota Work System.

In this application under O 53 of the Rules of the High Court 1980 for certiorari to quash the award, the union alleged that the Industrial Court acted in excess of its jurisdiction or without jurisdiction in that:

(1) it erred in law and in fact when it failed to correctly take into account the provisions of s 54 of the Act in dealing with the said dispute;

(2) it erred in law and/or did not act on the evidence and the principles of the law of evidence which it is required to abide by virtue of s 29 of the Act;

(3) it acted beyond the scope of the statutory reference to it of the said dispute;

(4) it did not answer the question remitted to it but instead answered some other question not remitted to it;

(5) it came to a conclusion which on the evidence it could not reasonably come; and

(6) it did not take into account the policy and purpose of the Act in general and the provisions of s 30(4), (5) and (6) of the Act.

The company, on the other hand, denies that the Industrial Court had committed any jurisdictional error.

It is significant to note and to bear in mind at the very outset that an application for certiorari should not be treated as an appeal. The (then) Supreme Court in *Harpers Trading (M) Sdn Bhd v National Union of Commercial Workers* [1991] 1 MLJ 417 reminded that judicial review is not an appeal against the decision but is merely a review of the manner in which the decision was made. This principle was restated by the Court of Appeal in its recent decision in *Ang Beng Teik v Pan Global Textile Bhd, Penang* [1996] 3 MLJ 137.

With regard to the first ground, learned counsel for the union submitted that the Industrial Court admitted documents (at pp 142–144, 149 in encl 1) relating to negotiation, conciliation and offer which are forbidden by s 54(1) and (3) of the Act, and therefore the award should be quashed for error. In my view, the learned chairman of the Industrial Court was correct when he ruled that the letters were not written during the negotiation to which this trade dispute relates. This trade dispute which was jointly referred had not arisen at the time when the letters were written. Indeed, there was no evidence of negotiation, conciliation or offer in the letters. These letters were in fact actual written agreements between the parties and thus, they were not excluded by s 54(1) and (3) of the Act, which merely excludes evidence of any negotiations, conciliations or offers made without the other party's agreement. It is pertinent to note that the two letters complained of were not even relied on by the Industrial Court as the basis of the award. The Industrial Court based its decision mainly on the grounds of the company's reasons for implementing the Rota Work System; the union's failure to adduce any evidence in rebuttal and the law relating to implementing such a system.

Now I come to the second and fifth grounds together which the union claimed that the Industrial Court chairman did not base his award on all the evidence before him. I wish to say that there is no merit whatsoever on these grounds. Based on the evidence before him, the learned chairman of the Industrial Court could not have come to any other conclusion as he did. Had the Industrial Court come to an opposite finding, its decision would have been against the weight of the evidence and therefore, unreasonable. It was the company which gave evidence through its sole witness to justify the company's need to implement the Rota Work System. The union chose not to call any witnesses to rebut the company's witness's testimony. Accordingly, the company witness's testimony remained unchallenged. The union failed to call any witness to show in what way the Rota Work System would be detrimental, socially or

financially, to their members. Failure to rebut the company's evidence is, therefore, fatal to the union's case. A mere offer of witnesses for cross-examination without the witnesses giving evidence in court is worthless. Indeed, it was for the union to show to the Industrial Court why their members objected to the Rota Work System and why the system should not be implemented. This the union failed to do. The Industrial Court, after careful scrutiny of the facts, made the findings of fact and since the union did not give any evidence to rebut the company's case, the Industrial Court was therefore justified in coming to its conclusion on the facts. It is surely not a case where the Industrial Court had acted on no evidence or had come to a conclusion which on the evidence it could not reasonably come to (see *Ashbridge Investments Ltd v Minister of Housing and Local Government* [1965] 3 All ER 371). So what was so perverse about the Rota Work System if it was based on evidence that was not rebutted or controverted? These are matters for the Industrial Court and not for the High Count to determine.

The third ground alleged that the Industrial Court acted beyond the scope of the statutory reference in that by allowing the Rota Work System, the Industrial Court had encroached into the existing collective agreement ('the CA') contrary to art 33 (rest day), art 34 (working hours) and art 48 (existing benefits). In my view, the Industrial Court was fully entitled to allow the Rota Work System to be implemented by the company. Article 33 is silent on Sunday being the permanent rest day. The implementation of the Rota Work System is not contrary to the existing CA. In fact, it falls squarely within art 5(a) of the CA which reads:

> The union recognizes *the right of the company to operate and manage its business in all respects including the right to* engage, discipline, suspend or discharge for proper cause, to determine the *manning of its operations and the allocation of duties to its employees.* (Emphasis added.)

Thus, it is the prerogative of the company to operate and manage its business in the manner it thinks benefits it. There is nothing new about the Rota Work System. A similar work system had been endorsed by the Industrial Court in two earlier decisions, namely *Nestle Food (M) Sdn Bhd (formerly known as Food Specialities (M) Sdn Bhd) v Kesatuan Pekerja-Pekerja Perkilangan Perusahaan Makanan* [1995] 1 ILR 249 and *Fujisash (M) Sdn Bhd Prai v Kesatuan Pekerja-Pekerja Perusahaan Logam* [1993] 2 ILR 270. Since it is not expressly provided in the CA that Sunday is the permanent rest day, or there was any evidence adduced in court that Sunday rest day was an existing benefit, art 5(2) clearly authorizes the implementation of the Rota Work System. Moreover, s 59(1) of the Employment Act 1955 confers the right on the employer to determine the rest day in a week. Section 59(1) states:

> Every employee shall be allowed in each week a rest day of one whole day *as may be determined from time to time by the employer* ... . (Emphasis added.)

When a trade dispute is referred to the Industrial Court, the Industrial Court is given wide powers under s 30(4), (5), (5A) and (6) of the Act in settling trade disputes. The Industrial Court can create new terms or

impose new obligations (see *Viking Askim Sdn Bhd v National Union of Employees in Companies Manufacturing Rubber Products & Anor* [1991] 2 MLJ 115). Section 32(2) of the Act also recognizes the Industrial Court's power to create new rights or terms and conditions of employment. Section 32(2) provides:

> As from the date of the award ... it shall be an implied term of the contract between the workmen and employers bound by the award that ... the conditions of employment to be observed under the contract shall be in accordance with the award or decision unless varied by a subsequent award or agreement between the parties.

So, by the above provision, the Industrial Court's award would supersede any existing right or obligation. The Supreme Court's decision in *Sabah Banking Employees' Union v Sabah Commercial Banks' Association* [1989] 2 MLJ 284 illustrates the Industrial Court's power to create or impose new terms of employment. In that case, the Industrial Court ordered the employer to pay increased contributions to EPF even though the Employees Provident Fund Act 1991 conferred that discretion entirely on the employer. The Supreme Court upheld the Industrial Court's decision and ruled that the Industrial Court had the right to impose an increased obligation on the employer, notwithstanding the statutory right of the employer.

Accordingly, I find the third ground baseless and I reject it.

The union complained in its fourth ground that the Industrial Court did not answer the question remitted to it but instead answered some other question not remitted. It is to be noted that the sole question remitted to the Industrial Court for its decision was whether the company should be allowed to implement the Rota Work System, and this was precisely what the chairman of the Industrial Court answered and he answered it in the affirmative. He said at p 210 of the award:

> The court is satisfied that the proposal of the company to introduce the Rota Work System is a bona fide exercise of its management function. In doing so it does not contravene any regulatory or other law. The fact that it may vary a past practice of treating Sunday as a rest day does not bring it within the ambit of s 33 or 56 of the Industrial Relations Act 1967. Therefore, it does not require special circumstances.

With that finding, I cannot see how the Industrial Court had failed to answer the question posed to it.

The last contention is that the Industrial Court did not take the policy and purpose of the Act into account and its provisions under s 30(4), (5) and (6) when making the award. I must say that there is no substance in the contention. The learned chairman of the Industrial Court did in fact take into account all the matters raised under this ground when he said at p 209 of the award:

> The court in making its award in respect of a trade dispute is required by s 30 of the Industrial Relations Act 1967 to have regard to the public interest, the financial implication and the effect of the award on the economy of the country and on the industry concerned and also on the probable

effect in related or similar industries and shall act according to equity and good conscience and the substantial merits of the case without regard to technicalities and legal forms. A

he continued at p 210:

Therefore, the court having considered the requirements of s 30(4) of the Act in particular the public interest, the financial implications and the good effect the award would probably have on the economy of the country and the industry concerned and the court recognizing the substantial merits of the company's proposal as required by s 30(5) of the Act, awards that the company be allowed to implement the Rota Work System. B

In the face of the clear award of the Industrial Court, with respect, I agree with the submission of learned counsel for the company that the last contention of the union is utterly frivolous and indeed, unfounded. C

In the instant case, the company and the union on behalf of its members mutually agreed to refer the dispute to the Industrial Court under s 26(1) of the Act. The union in effect consented to have the Industrial Court decide this question and by so doing consented to abide by a decision that may be made by it in accordance with law. After perusing this case and hearing submissions of both counsel, I hold that there was a legal basis for the Industrial Court to have made the award. In making the award, the Industrial Court had not committed any error of law and had correctly approached the facts of the case. For these reasons, I see no ground whatsoever for this court to interfere with the award. In the result, I dismiss this application with costs. D E

Application dismissed.

Reported by Hanim Kamaruddin F

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